

SENATE BILL 1472

By Finney R.

AN ACT to amend Tennessee Code Annotated, Title 36,
Chapter 6, Part 3, relative to children's rights to
visitation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-6-306, is amended by deleting the
current language in its entirety and by substituting instead the following:

(a) As used in this section, unless the context otherwise requires:

(1) "Attorney" means, if appointed to represent a child pursuant to this
section, an attorney serving as the child's legal advocate in a traditional attorney-
client relationship with the child, as governed by the Tennessee rules of
professional conduct. An attorney defined pursuant to this subdivision owes the
same duties of undivided loyalty, confidentiality, and zealous representation of
the child's expressed wishes as the attorney would to an adult client;

(2) "Child" means minor child and children;

(3) "Grandparent" means a natural or adoptive parent of a child's natural
or adoptive parent;

(4) "Guardian ad litem" means an individual whom the court appoints to
assist the court in determining the child's best interests. A guardian ad litem
does not need to be an attorney;

(5) "Lawyer-guardian ad litem" means an attorney appointed pursuant to
this section. A lawyer-guardian ad litem represents the child, and has the powers
and duties as set forth in this section; and

(6) "Parent" means the natural or adoptive parent of a child.

(b) A child's grandparent may seek a grandparenting time order under one (1) or more of the following circumstances:

(1) An action for divorce, separate maintenance, or annulment involving the child's parents is pending before the court;

(2) The child's parents are divorced, legally separated, or have had their marriage annulled;

(3) The child's parent who is a child of the grandparents is deceased;

(4) The child's parents have never been married, they are not residing in the same household, and paternity has been established pursuant to title 36, chapter 2, part 3, or by a determination by a court of competent jurisdiction that the individual is the father of the child;

(5) Except as otherwise provided in subsection (n), legal custody of the child has been given to a person other than the child's parent, or the child is placed outside of and does not reside in the home of a parent; or

(6) In the year preceding the commencement of an action under this section for grandparenting time, the grandparent provided an established custodial environment for the child, whether or not the grandparent had custody under a court order.

(c) A court shall not permit a parent of a father who has never been married to the child's mother to seek an order for grandparenting time under this section unless the father has completed a voluntary acknowledgment of paternity, or paternity has been established pursuant to title 36, chapter 2, part 3, or by the determination of a court of competent jurisdiction. The court shall not permit the parent of a putative father to seek an order for grandparenting time unless the putative father has provided substantial and

regular support or care in accordance with the putative father's ability to provide the support or care.

(d) A grandparent seeking a grandparenting time order shall commence an action for grandparenting time by filing a motion with a court that has competent jurisdiction over the child.

(e) All of the following apply to an action for grandparenting time under this section:

(1) The complaint or motion for grandparenting time filed under this section shall be accompanied by an affidavit setting forth facts supporting the requested order. The grandparent shall give notice of the filing to each person who has legal custody of, or an order for parenting time with, the child. A party having legal custody may file an opposing affidavit. A hearing shall be held by the court on its own motion or if a party requests a hearing. At the hearing, parties submitting affidavits shall be allowed an opportunity to be heard.

(2) In order to give deference to the decisions of fit parents, it is presumed in a proceeding under this subsection that a fit parent's decision to deny grandparenting time does not create a substantial risk of harm to the child's mental, physical, or emotional health. To rebut the presumption created in this subdivision, a grandparent filing a complaint or motion under this section must prove by a preponderance of the evidence that the parent's decision to deny grandparenting time creates a substantial risk of harm to the child's mental, physical, or emotional health. If the grandparent does not overcome the presumption, the court shall dismiss the complaint or deny the motion.

(3) If a court of appellate jurisdiction determines in a final and nonappealable judgment that the burden of proof described in subdivision (2) is

unconstitutional, a grandparent filing a complaint or motion under this section must prove by clear and convincing evidence that the parent's decision to deny grandparenting time creates a substantial risk of harm to the child's mental, physical, or emotional health to rebut the presumption created in subdivision (2).

(4) A court may order an attorney, guardian ad litem, or attorney-guardian ad litem to represent the child in proceedings pursuant to this section.

(f) If two (2) fit parents sign an affidavit stating that they both oppose an order for grandparenting time, the court shall dismiss a complaint or motion seeking an order for grandparenting time filed under this section. This subsection does not apply if one (1) of the fit parents is a stepparent who adopted a child under title 36, chapter 1, part 1, and the grandparent seeking the order is the natural or adoptive parent of a parent of the child who is deceased or whose parental rights have been terminated.

(g) If the court finds that a grandparent has met the standard for rebutting the presumption described in subdivision (e)(2), the court shall consider whether it is in the best interests of the child to enter an order for grandparenting time. If the court finds by a preponderance of the evidence that it is in the best interests of the child to enter a grandparenting time order, the court shall enter an order providing for reasonable grandparenting time of the child by the grandparent by general or specific terms and conditions. In determining the best interests of the child pursuant to this subsection, the court shall consider all of the following:

(1) The love, affection, and other emotional ties existing between the grandparent and the child;

(2) The length and quality of the prior relationship between the child and the grandparent, the role performed by the grandparent, and the existing emotional ties of the child to the grandparent;

(3) The grandparent's moral fitness;

(4) The grandparent's mental and physical health;

(5) The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference;

(6) The effect on the child of hostility between the grandparent and the parent of the child;

(7) The willingness of the grandparent, except in the case of abuse or neglect, to encourage a close relationship between the child and the parent or parents of the child;

(8) Any history of physical, emotional, or sexual abuse or neglect of any child by the grandparent;

(9) Whether the parent's decision to deny, or lack of an offer of, grandparenting time is related to the child's well-being or is for some other unrelated reason; and

(10) Any other factor relevant to the physical and psychological well-being of the child.

(h) If the court has determined that a grandparent has met the standard for rebutting the presumption described in subdivision (e)(2), the court may refer that grandparent's complaint or motion for grandparenting time filed under this section to a Rule 31 mediator pursuant to the rules of the Tennessee supreme court. If the complaint or motion is referred to a mediator and no settlement is reached within a reasonable time after the date of referral, the complaint or motion shall be heard by the court as provided in this section.

(i) A grandparent may not file more than once every two (2) years, absent a showing of good cause, a complaint or motion under this section seeking a

grandparenting time order. If the court finds there is good cause to allow a grandparent to file more than one (1) complaint or motion under this section in a two (2) year period, the court shall allow the filing and shall consider the complaint or motion. Upon motion of a person, the court may order reasonable attorney fees to the prevailing party.

(j) The court shall not enter an order prohibiting an individual who has legal custody of a child from changing the domicile of the child if the prohibition is primarily for the purpose of allowing a grandparent to exercise the rights conferred in a grandparenting time order entered under this section.

(k) A grandparenting time order entered under this section does not create parental rights in the individual or individuals to whom grandparenting time rights are granted. The entry of a grandparenting time order does not prevent a court of competent jurisdiction from acting upon the custody of the child, the parental rights of the child, or the adoption of the child.

(l) A court shall not modify or terminate a grandparenting time order entered under this section unless it finds by a preponderance of the evidence, on the basis of facts that have arisen since entry of the grandparenting time order or were unknown to the court at the time it entered that order, that a change has occurred in the circumstances of the child or the child's custodian and that a modification or termination of the existing order is necessary to avoid creating a substantial risk of harm to the mental, physical, or emotional health of the child. A court modifying or terminating a grandparenting time order under this subsection shall include specific findings of fact in its order in support of its decision.

(m) The court shall make a record of its analysis and findings under subsections (e), (g), (i), and (l), including the reasons for granting or denying a requested grandparenting time order.

(n) Except as otherwise provided in this subsection, adoption of a child pursuant to title 36, chapter 1, part 1, terminates the right of a grandparent to commence an action for grandparenting time with the child. Adoption of a child by a stepparent pursuant to title 36, chapter 1, part 1, does not terminate the right of a grandparent to commence an action for grandparenting time with that child.

SECTION 2. Tennessee Code Annotated, Section 36-6-303, is amended by deleting that section in its entirety.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.